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MONTANA LEGISLATIVE HISTORY

Chapter 465 19 95

Bill H 366 S _____ Original bill & history ____C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Feb 09	✓ C	Hearing Date(s)	Mar 15	✓ C
	Feb 16	✓ C		Mar 22	✓ C
	Feb 17	✓ C		_____	____C
	_____	____C		_____	____C
Date Out	Feb 17	✓ C		Mar 22	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

1/28	FIRST READING		
1/28	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/30	FISCAL NOTE REQUESTED		
2/03	FISCAL NOTE RECEIVED		
2/07	FISCAL NOTE PRINTED		
2/10	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED		
2/17	2ND READING PASSED	54	43
2/18	3RD READING PASSED	49	42
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO HIGHWAYS & TRANSPORTATION		
3/09	HEARING		
3/15	COMMITTEE REPORT—BILL NOT PASSED AS AMENDED		
3/16	ADVERSE COMMITTEE REPORT ADOPTED	30	20
3/16	MOTION FAILED TO RECONSIDER PREVIOUS ACTION	24	26

HB 365 INTRODUCED BY COBB

REQUEST BOARD OF REGENTS OF HIGHER EDUCATION TO REPORT TO THE LEGISLATURE, THE LEGISLATIVE FINANCE COMMITTEE, THE GOVERNOR, AND THE PUBLIC ON GRADUATION RATES, ENROLLMENT RATES IN REMEDIAL CLASSES, SPACE UTILIZATION, AND OTHER INFORMATION FOR EACH UNIT OF MONTANA UNIVERSITY SYSTEM THAT OFFERS A 4-YEAR BACCALAUREATE PROGRAM

1/28	INTRODUCED		
1/28	FIRST READING		
1/28	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/30	FISCAL NOTE REQUESTED		
2/03	HEARING		
2/04	FISCAL NOTE RECEIVED		
2/04	FISCAL NOTE PRINTED		
2/15	COMMITTEE REPORT—BILL PASSED		
2/17	2ND READING PASSED AS AMENDED	77	20
2/17	REREFERRED TO APPROPRIATIONS		
3/09	HEARING		
3/14	REVISED FISCAL NOTE REQUESTED, AS AMENDED BY APPROPRIATIONS COMMITTEE		
3/14	REVISED FISCAL NOTE RECEIVED		
3/15	REVISED FISCAL NOTE PRINTED		
3/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/23	2ND READING PASSED	98	2
3/23	3RD READING PASSED	93	3
	TRANSMITTED TO SENATE		
3/24	FIRST READING		
3/24	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/27	HEARING		
3/28	TABLED IN COMMITTEE		
	DIED IN COMMITTEE		

HB 366 INTRODUCED BY KASTEN, ET AL.

GENERALLY REVISE LAWS RELATED TO ADULT PROTECTIVE SERVICES

BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

1/28	INTRODUCED
1/28	FIRST READING
1/28	REFERRED TO HUMAN SERVICES & AGING
1/30	FISCAL NOTE REQUESTED
2/01	REREFERRED TO JUDICIARY
2/02	FISCAL NOTE RECEIVED

2/02	FISCAL NOTE PRINTED		
2/09	HEARING		
2/16	TABLED IN COMMITTEE		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	94	0
2/21	3RD READING PASSED	98	0
	TRANSMITTED TO SENATE		
2/27	FIRST READING		
2/27	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
3/03	REREFERRED TO JUDICIARY		
3/15	HEARING		
3/23	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED	49	0
3/29	3RD READING CONCURRED	47	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS CONCURRED	99	0
4/04	3RD READING AMENDMENTS CONCURRED	99	0
4/06	SIGNED BY SPEAKER		
4/07	SIGNED BY PRESIDENT		
4/11	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 465		
	EFFECTIVE DATE: 04/14/95		

HB 367 INTRODUCED BY JORE, ET AL.

ABOLISH PROVISIONS REQUIRING A PARENT TO ENROLL A CHILD IN SCHOOL AND PROVISIONS REQUIRING A CHILD TO ATTEND SCHOOL

1/28	INTRODUCED
1/28	FIRST READING
1/28	REFERRED TO EDUCATION & CULTURAL RESOURCES
1/30	FISCAL NOTE REQUESTED
2/02	FISCAL NOTE RECEIVED
2/02	FISCAL NOTE PRINTED
2/06	HEARING
2/08	TABLED IN COMMITTEE
2/23	MISSED TRANSMITTAL DEADLINE
	DIED IN COMMITTEE

HB 368 INTRODUCED BY HOLLAND, ET AL.

IMPLEMENT RECOMMENDATION OF THE GOVERNOR'S TASK FORCE TO RENEW MONTANA GOVERNMENT BY ELIMINATING CERTAIN COUNTY TREASURER SCHOOL BUDGETING FUNCTIONS

BY REQUEST OF THE GOVERNOR

1/28	INTRODUCED		
1/28	FIRST READING		
1/28	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/30	FISCAL NOTE REQUESTED		
2/02	FISCAL NOTE RECEIVED		
2/02	FISCAL NOTE PRINTED		
2/06	HEARING		
2/10	COMMITTEE REPORT—BILL PASSED		
2/14	2ND READING PASSED	95	5
2/15	3RD READING PASSED	88	12
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO EDUCATION & CULTURAL RESOURCES		
3/06	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED		

HOUSE BILL NO. 366

INTRODUCED BY Foster Mussman

BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO ADULT PROTECTIVE SERVICES; INCORPORATING PROTECTIVE SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES INTO THE MONTANA ELDER AND DEVELOPMENTALLY DISABLED ABUSE PREVENTION ACT; REQUIRING CERTAIN ADVOCATES OF PERSONS WITH DEVELOPMENTAL DISABILITIES TO REPORT SUSPECTED ABUSE, SEXUAL ABUSE, NEGLECT, OR EXPLOITATION; EXPANDING THE LIST OF PERSONS TO WHOM CERTAIN CONFIDENTIAL INFORMATION MAY BE RELEASED; GRANTING LIMITED IMMUNITY TO PERSONS WHO PROVIDE OR USE BACKGROUND OR EMPLOYMENT SCREENING INFORMATION REGARDING AN EMPLOYEE'S OR VOLUNTEER'S HISTORY OF ABUSE, SEXUAL ABUSE, NEGLECT, OR EXPLOITATION IN MAKING AN EMPLOYMENT DECISION; REVISING DEFINITIONS; INCORPORATING FEDERAL PROVISIONS REGARDING PROTECTION AND ADVOCACY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES AND ACCESS BY THE DESIGNATED PROTECTION ADVOCACY SYSTEM; AMENDING SECTIONS 50-16-603, 52-3-202, 52-3-207, 52-3-803, 52-3-804, 52-3-811, 52-3-813, 52-3-814, 53-20-161, AND 53-21-166, MCA; REPEALING SECTIONS 52-4-101, 52-4-102, 52-4-103, 52-4-104, 52-4-105, 52-4-106, 52-4-107, 52-4-108, AND 52-4-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-16-603, MCA, is amended to read:

"50-16-603. Confidentiality of health care information. Health care information in the possession of the department, a local board, a local health officer, or their authorized representatives may not be released except:

(1) for statistical purposes, if no identification of individuals can be made from the information released;

(2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may

be released;

(3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being of the named person;

(4) as allowed by Title 50, chapters 17 and 18, [section 11], [section 12], and 53-21-169;

(5) to another state or local public health agency, including those in other states, whenever necessary to continue health services to the named person or to undertake public health efforts to prevent or interrupt the transmission of a communicable disease;

(6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202. If the health care information is required in a subsequent court proceeding involving child abuse, the information may be disclosed only in camera and documents containing the information must be sealed by the court upon conclusion of the proceedings.

(7) to medical personnel, the department, a local health officer or board, or a district court when necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with any other provision contained in this part."

Section 2. Section 52-3-202, MCA, is amended to read:

"**52-3-202. Definitions.** As used in this part, the following definitions apply:

(1) "Aged person" means an aged person as defined by the department.

(2) "Department" means the department of family services.

(3) "Disabled adult" means a person 18 years of age or ~~over~~ older who is defined by the department as disabled ~~but not~~ or who is developmentally disabled, as defined in 53-20-102.

(4) "Protective services" means assistance to an aged person or disabled adult in obtaining the services offered by the department."

Section 3. Section 52-3-207, MCA, is amended to read:

"**52-3-207. Protective services not creating guardianship or conservatorship.** (1) The provision of protective services does not create a guardianship or conservatorship relationship between the department and the aged person or disabled adult unless a guardianship or conservatorship is created in accordance with the requirements of Title 72, chapter 5, part 3 or 4.

(2) The department may not provide protective services that impose a legal limitation or restriction on an aged person or a disabled adult:

(a) except emergency protective services provided under 52-3-804; or

(b) unless the department has been appointed legal guardian or conservator for that person under the provisions of Title 72, chapter 5, part 3 or 4."

Section 4. Section 52-3-803, MCA, is amended to read:

"52-3-803. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means the infliction of physical or mental injury or the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a ~~developmentally disabled~~ person with a developmental disability without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) ~~"Developmentally disabled person" means a person 18 years of age or older who is developmentally disabled as defined in 53-20-102.~~

~~(3)~~ "Exploitation" means the unreasonable use of an older person or a ~~developmentally disabled~~ person with a developmental disability, the person's money, or the person's property to the advantage of another by means of duress, menace, fraud, or undue influence.

~~(4)~~(3) "Incapacitated person" has the meaning given in 72-5-101.

~~(5)~~(4) "Long-term care facility" means a facility defined in 50-5-101.

~~(6)~~(5) "Mental injury" means an identifiable and substantial impairment of an older person's intellectual or psychological functioning or well-being.

~~(7)~~(6) "Neglect" means the failure of a guardian~~,~~; an employee of a public or private residential institution, facility, home, or agency~~,~~; or any person legally responsible in a residential setting for the welfare of an older ~~person's~~ person or a ~~developmentally disabled person's welfare~~ person with a developmental disability to provide, to the extent of legal responsibility, food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the ~~developmentally disabled~~ person with a developmental disability.

~~(8)~~(7) "Older person" means a person who is at least 60 years of age. ~~For~~ purposes of prosecution under 52-3-825(2), the person 60 years of age or older must be unable to provide personal protection from abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of

frailties or dependencies brought about by advanced age.

(8) "Person with a developmental disability" means a person 18 years of age or older who is developmentally disabled, as defined in 53-20-102.

(9) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(10) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."

Section 5. Section 52-3-804, MCA, is amended to read:

"**52-3-804. Duties of department ~~of family services~~.** (1) The department shall investigate reports of abuse, sexual abuse, neglect, or exploitation received pursuant to 52-3-811(1)(a).

(2) The department ~~of family services~~ shall prepare an annual report of the information obtained pursuant to the reporting requirement of this part.

(3) The department shall, when appropriate, provide protective services under Title 52, chapter 3, part 2, ~~or under Title 52, chapter 4, part 1,~~ for ~~a~~ an older person or a person with a developmental disability alleged to have been abused, sexually abused, neglected, or exploited.

(4) If a person alleged to be abused, sexually abused, neglected, or exploited pursuant to this part or the person's caretaker refuses to allow a representative of the department entrance to the premises for the purpose of investigating a report made pursuant to 52-3-811(1)(a), the district court in the county where the person is found may order a law enforcement officer or a department social worker to enter the premises to conduct an investigation upon finding that there is probable cause to believe that the person is abused, sexually abused, neglected, or exploited.

(5) If a representative of the department has reasonable grounds to believe that an older ~~or developmentally disabled~~ person or person with a developmental disability alleged to be abused, sexually abused, or neglected is suffering from abuse, sexual abuse, or neglect that presents a substantial risk of death or serious physical injury, the department may:

(a) provide voluntary protective services as provided in subsection (3); or

(b) if the department representative has reasonable grounds to believe that the person is incapacitated, provide emergency protective services as follows:

(i) arrange or facilitate an appropriate emergency protective service placement;

(ii) transport or arrange for the transport of the person to the appropriate placement;

(iii) not later than 2 judicial days following placement of the person, either:

(A) provide voluntary protective services as provided under subsection (3); or

(B) petition the district court to act as temporary guardian or appoint a temporary guardian as provided in 72-5-317."

Section 6. Section 52-3-811, MCA, is amended to read:

"52-3-811. Reports. (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a ~~developmentally disabled~~ person with a developmental disability known to them in their professional or official capacities has been subjected to abuse, sexual abuse, neglect, or exploitation, they shall:

(a) if the person is not a resident of a long-term care facility, report the matter to:

(i) the department of family services or its local affiliate;

(ii) the county attorney of the county ~~in which~~ where the person resides or ~~in which~~ where the acts that are the subject of the report occurred;

(b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department of health and environmental sciences. The department of health and environmental sciences shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, sexual abuse, neglect, or exploitation contained in the report to be substantially true, forward a copy of the report to the department of family services and to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department of family services ~~which~~ that may be construed as abuse, sexual abuse, neglect, or exploitation, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county ~~in which~~ where the older person or the ~~developmentally disabled~~ person with a developmental disability resides or ~~in which~~ where the acts that are the subject of the report occurred.

(3) Professionals and other persons required to report are:

(a) a physician, resident, intern, professional or practical nurse, physician's assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;

(b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner,

coroner, or any other health or mental health professional;

(c) an ambulance attendant;

(d) a social worker or other employee of the state, a county, or a municipality assisting an older person or a ~~developmentally disabled~~ person with a developmental disability in the application for or receipt of public assistance payments or services;

(e) a person who maintains or is employed by a roominghouse, retirement home, nursing home, group home, or adult foster care home;

(f) an attorney, unless the attorney acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies;

(g) a peace officer or other law enforcement official; ~~and~~

(h) a person providing services to an older person or a ~~developmentally disabled~~ person with a developmental disability pursuant to a contract with a state or federal agency; and

(i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794(e), 42 U.S.C. 6042, and 42 U.S.C. 10805, unless disclosure would violate provisions of state or federal law.

(4) Any other person may submit a report as provided in subsection (1)."

Section 7. Section 52-3-813, MCA, is amended to read:

"**52-3-813. Confidentiality.** (1) The case records of the departments of social and rehabilitation services and family services, their local affiliate, the county attorney, and the court, concerning actions taken under this part, and all reports made pursuant to 52-3-811 must be kept confidential except as provided by this section.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who is caring for an older person or a ~~developmentally disabled~~ person with a developmental disability who the physician reasonably believes was abused, sexually abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person or the ~~developmentally disabled~~ person with a developmental disability if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, sexually abused, neglected, or

exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, sexual abuse, neglect, or exploitation is later convicted of an offense constituting abuse, sexual abuse, neglect, or exploitation and if the identity of the older person or the ~~developmentally disabled~~ person with a developmental disability who is the subject of the report is not disclosed to the researcher;

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(f) an authorized representative of a provider of services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or ~~developmentally disabled~~ person with a developmental disability~~,~~ if:

(i) the department and the provider are parties to a contested case proceeding under Title 2, chapter 4, part 6, resulting from action by the department adverse to the license of the provider and if information contained in the records or reports of the department is relevant to the case; ~~or~~

(ii) disclosure to the provider is determined by the department to be necessary to protect an interest of a person alleged to be an abused, sexually abused, neglected, or exploited older person or ~~developmentally disabled~~ person with a developmental disability; or

(iii) the person is carrying out background screening or employment- or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with an older person or a person with a developmental disability through employment or volunteer activities if the disclosure is limited to information that indicates a risk to an older person or a person with a developmental disability posed by the employee or volunteer, as determined by the department;

(g) an employee of the department or the department of social and rehabilitation services if disclosure of the record or report is necessary for administration of a program designed to benefit a person alleged to be an abused, sexually abused, neglected, or exploited older person or ~~developmentally disabled~~ person with a developmental disability; ~~and~~

(h) an authorized representative of a guardianship program approved by the department if the department determines that disclosure to the program or to a person designated by the program is necessary for the proper provision of guardianship services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or ~~developmentally disabled~~ person with a developmental disability;

(i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794(e), 42 U.S.C. 6042 and 42 U.S.C. 10805;

(j) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and does not violate the privacy rights of the older person, person with a developmental disability, or alleged perpetrator of abuse, sexual abuse, neglect, or exploitation, as determined by the department;

(k) a coroner or medical examiner who is determining the cause of death of an older person or a person with a developmental disability;

(l) a person about whom a report has been made and that person's attorney with respect to relevant records pertaining to that person only without disclosing the identity of the person who made the report or any other person whose safety might be endangered through disclosure;

(m) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a developmental disability; and

(n) a department, agency, or organization, including a federal agency, military reservation, or tribal organization, that is legally authorized to receive, inspect, or investigate reports of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a developmental disability and that meets the disclosure criteria contained in this section.

(3) The records and reports required to be kept confidential by subsection (1) must be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court ~~which~~ that has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, sexually abused, neglected, or exploited an older person or a ~~developmentally disabled~~ person with a developmental disability is the holder of a license, permit, or certificate issued by the department of commerce under the provisions of Title 37 or issued by any other entity of state government, the report may be submitted to the entity that issued the license

permit, or certificate."

Section 8. Section 52-3-814, MCA, is amended to read:

"**52-3-814. Immunity from civil and criminal liability.** (1) ~~Any~~ A person who makes a report required or authorized to be made under 52-3-811 is immune from civil or criminal liability ~~which~~ that might otherwise be incurred or imposed as a result of ~~such a~~ the report unless the report is false in any material respect and the person acted in bad faith or with malicious purpose.

(2) A person who provides information or who uses information obtained pursuant to 52-3-813(2) to refuse to hire or to discharge an employee, volunteer, or other person who through their employment or volunteer activities may have unsupervised contact with an older person or a person with a developmental disability is immune from civil liability unless the person providing or using the information acts in bad faith or with malicious purpose."

Section 9. Section 53-20-161, MCA, is amended to read:

"**53-20-161. Maintenance of records.** (1) Complete records for each resident must be maintained and must be readily available to persons who are directly involved with the particular resident, to the protection and advocacy systems authorized under the provisions of 29 U.S.C. 794(e), 42 U.S.C. 6042, and 42 U.S.C. 10805, and to the mental disabilities board of visitors. All information contained in a resident's records must be considered privileged and confidential. The parents or guardian, the responsible person appointed by the court, the resident's attorney, and any person properly authorized in writing by the resident, if the resident is capable of giving informed consent, or by ~~his~~ the resident's parents or guardian or the responsible person must be permitted access to the resident's records. ~~Information~~ Except as authorized in this subsection, information may not be released from the records of a resident or former resident of the residential facility unless the release of the information has been properly authorized in writing by:

(a) the court;

(b) the resident or former resident if ~~he is~~ over the age of majority and ~~is~~ capable of giving informed consent;

(c) the parents or guardian in charge of a resident under ~~the age of~~ 12 years of age;

(d) the parents or guardian in charge of a resident ~~over the age of~~ 12 years of age or older but

under the age of majority and the resident if the resident is capable of giving informed consent;

(e) the guardian of a resident over the age of majority who is incapable of giving informed consent;

(f) the superintendent of the residential facility or ~~his~~ a designee as custodian of a resident over the age of majority who is incapable of giving informed consent and for whom no legal guardian has been appointed;

(g) the superintendent of the residential facility or ~~his~~ a designee as custodian of a resident under the age of majority for whom there is no parent or legal guardian; or

(h) the superintendent of the residential facility or ~~his~~ a designee as custodian of a resident of that facility whenever release is required by federal or state law or department of social and rehabilitation services rules.

(2) Information may not be released by a superintendent or ~~his~~ a designee as set forth in subsection (1)(f), (1)(g), or (1)(h) less than 15 days after sending notice of the proposed release of information to the resident, ~~his~~ the resident's parents or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the court, if any, and the court that ordered the admission. If any of the parties so notified objects to the release of information, they may petition the court for a hearing to determine whether the release of information should be allowed. Information may not be released pursuant to subsection (1)(f), (1)(g), or (1)(h) unless it is released to further some legitimate need of the resident or to accomplish a legitimate purpose of the facility that is not inconsistent with the needs and rights of the resident. Information may not be released pursuant to ~~these subsections~~ subsection (1)(f), (1)(g), or (1)(h) except in accordance with written policies consistent with the requirements of this part adopted by the facility. Persons receiving notice of a proposed release of information ~~shall~~ must also receive a copy of the written policy of the facility governing release of information.

(3) These records must include:

(a) identification data, including the resident's legal status;

(b) the resident's history, including but not limited to:

(i) family data, educational background, and employment record;

(ii) prior medical history, both physical and mental, including prior institutionalization;

(c) the resident's grievances, if any;

(d) an inventory of the resident's life skills, including mode of communication;

(e) a record of each physical examination that describes the results of the examination;

(f) a copy of the individual habilitation plan and any modifications ~~thereto~~ to the plan and an appropriate summary that will guide and assist the resident care workers in implementing the resident's ~~program~~ habilitation plan;

(g) the findings made in monthly reviews of the habilitation plan, which findings must include an analysis of the successes and failures of the habilitation program and direct whatever modifications are necessary;

(h) a copy of the postinstitutionalization plan that includes a statement of services needed in the community and any modifications ~~thereto~~ to the plan and a summary of the steps that have been taken to implement that plan;

(i) a medication history and status;

(j) a summary of each significant contact by a professional person with a resident;

(k) a summary of the resident's response to ~~his~~ the habilitation plan, prepared by a qualified mental retardation professional involved in the resident's habilitation and recorded at least monthly. Wherever possible, ~~such~~ the response must be scientifically documented.

(l) a monthly summary of the extent and nature of the resident's work activities and the effect of the activity upon the resident's progress in the habilitation plan;

(m) a signed order by a qualified mental retardation professional, professional person, or physician for any physical restraints;

(n) a description of any extraordinary incident or accident in the facility involving the resident, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of resident's mistreatment;

(o) a summary of family visits and contacts;

(p) a summary of attendance and leaves from the facility;

(q) a record of any seizures, illnesses, injuries, and treatments ~~thereof~~ and immunizations."

Section 10. Section 53-21-166, MCA, is amended to read:

"**53-21-166. Records to be confidential -- exceptions.** All information obtained and records prepared in the course of providing any services under this part to individuals under any provision of this part ~~shall be~~ confidential and privileged ~~matter~~ and ~~shall~~ must remain confidential and privileged after the individual is discharged from the facility. Except as provided in Title 50, chapter 16, part 5, information and

records may be disclosed only:

(1) in communications between qualified professionals in the provision of services or appropriate referrals;

(2) when the recipient of services designates persons to whom information or records may be released, provided that if a recipient of services is a ward and ~~his~~ the guardian or conservator designates in writing persons to whom records or information may be disclosed, ~~such~~ the designation ~~shall be~~ is valid in lieu of the designation by the recipient~~;~~. ~~except that nothing in this~~ This section ~~shall~~ may not be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information ~~which~~ that has been ~~given to him~~ provided in confidence by members of a patient's family~~;~~.

(3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which ~~he~~ the recipient may be entitled;

(4) for research if the department has promulgated rules for the conduct of research~~;~~. ~~such~~ The rules ~~shall~~ must include but ~~not be~~ are not limited to the requirement that all researchers ~~must~~ sign an oath of confidentiality~~;~~.

(5) to the courts as necessary to the administration of justice;

(6) to persons authorized by an order of court, after notice and opportunity for hearing to the person to whom the record or information pertains and the custodian of the record or information pursuant to the rules of civil procedure;

(7) to members of the mental disabilities board of visitors or their agents when necessary to perform their functions as set out in 53-21-104; and

(8) to the protection and advocacy systems authorized under the provisions of 29 U.S.C. 794(e), 42 U.S.C. 6042, and 42 U.S.C. 10805."

NEW SECTION. **Section 11. Protection and advocacy system for persons with developmental disabilities -- designation and authority.** (1) A protection and advocacy system for persons with developmental disabilities, as designated by the governor, may be administered in this state under the provisions of 42 U.S.C. 6041 through 6043 for the purpose of protecting the legal and human rights of persons with developmental disabilities.

(2) Pursuant to 42 U.S.C. 6042, the protection and advocacy system has the authority to:

(a) pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of and advocacy for the rights of persons in the state who are or may be eligible for treatment, services, or habilitation or who are being considered for a change in living arrangements, with particular attention to members of ethnic and racial minority groups;

(b) provide information on and referral to programs and services addressing the needs of persons with developmental disabilities;

(c) investigate incidents of abuse and neglect of persons with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred; and

(d) educate policymakers.

(3) Pursuant to 42 U.S.C. 6042, the protection and advocacy system has access:

(a) at all reasonable times and locations to any person with a developmental disability who is a resident in a facility that is providing services, supports, and other assistance to the resident;

(b) to all records of:

(i) any person with a developmental disability who is a client of the system if the person or the person's legal guardian, conservator, or other legal representative has authorized the system to have access to the records;

(ii) any person with a developmental disability who:

(A) by reason of the person's mental or physical condition is unable to authorize the system to have access to the records;

(B) does not have a legal guardian, conservator, or other legal representative or for whom the legal guardian is the state; and

(C) with respect to whom a complaint has been received by the system or with respect to whom as a result of monitoring or other activities there is probable cause to believe that the person has been subject to abuse or neglect; and

(iii) any person with a developmental disability who has a legal guardian, conservator, or other legal representative with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe that the health or safety of the person with a developmental disability is in serious and immediate jeopardy when:

(A) the representative has been contacted by the system upon receipt of the name and address of the representative;

(B) the system has offered assistance to the representative to resolve the situation; and

(C) the representative has failed or refused to act on behalf of the person with a developmental disability.

(4) Pursuant to 42 U.S.C. 6042, the term "records" includes but is not limited to:

(a) reports prepared or received by any staff person of a facility rendering care or treatment;

(b) reports prepared by an agency or staff person charged with investigating reports of incidents of abuse, neglect, injury, or death occurring at the facility that describes incidents of abuse, neglect, injury, or death occurring at the facility and the steps taken to investigate the incidents; and

(c) ischarge planning records.

(5) All information received under this section must be kept confidential as required by 45 CFR 1386.21(b).

(6) The state shall provide to the protection and advocacy system a copy of each annual survey report and plan of corrections for cited deficiencies made pursuant to section 1902(a)(31) of the federal Social Security Act with respect to any intermediate care facility for the developmentally disabled in the state within 30 days after completion of each report or plan, as required by 42 U.S.C. 6042.

(7) Pursuant to 42 U.S.C. 6042, the protection and advocacy system authorized in this section is independent of any agency that provides treatment, services, or habilitation to persons with developmental disabilities.

NEW SECTION. **Section 12. Protection and advocacy system for persons with disabilities -- designation and authority.** (1) A protection and advocacy system for persons with disabilities may be administered in the state under the provisions of 29 U.S.C. 794(e) for the purpose of protecting the legal and human rights of persons with disabilities who are ineligible for:

(a) client assistance under section 112 of the federal Rehabilitation Act of 1973; and

(b) protection and advocacy programs under part C of the federal Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C 6041, et seq., and the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986, 42 U.S.C. 10801, et seq.

(2) Pursuant to 29 U.S.C. 794(e), the protection and advocacy system:

(a) has the same general authority, including access to records and program income, as set forth in part C of the federal Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C 6041, et seq.

(b) has the authority to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of and advocacy for the rights of persons in the state who are or may be ineligible for protection and advocacy programs under part C of the federal Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C 6041, et seq., and the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986, 42 U.S.C. 10801, et seq., or for client assistance programs under section 112 of the federal Rehabilitation Act of 1973; and

(c) shall provide information on and referral to programs and services addressing the needs of persons with disabilities in the state.

NEW SECTION. **Section 13. Name change -- instructions to code commissioner.** Wherever the phrase "developmentally disabled person" or a similar phrase appears in Title 52, chapter 3, part 8, the code commissioner is directed to change the phrase to "person with a developmental disability" or a similar phrase, as that term is defined in 52-3-803.

NEW SECTION. **Section 14. Notification of tribal governments.** The secretary of state shall send a copy of [this act] to the tribal chairperson of each of the seven Montana reservations and to the tribal chairperson of the Little Shell tribe.

NEW SECTION. **Section 15. Repealer.** Sections 52-4-101, 52-4-102, 52-4-103, 52-4-104, 52-4-105, 52-4-106, 52-4-107, 52-4-108, and 52-4-110, MCA, are repealed.

NEW SECTION. **Section 16. Codification instruction.** [Sections 11 and 12] are intended to be codified as an integral part of Title 53, chapter 20, and the provisions of Title 53, chapter 20, apply to [sections 11 and 12].

NEW SECTION. **Section 17. Two-thirds vote required.** Because section 52-3-814(2) limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage. If __ Bill No. ___ [LC 143] does not receive the required two-thirds vote, then 52-3-814(2) is void.

NEW SECTION. **Section 18. Effective date.** [This act] is effective on passage and approval.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0366, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act generally revising the laws related to adult protective services; incorporating protective services for persons with developmental disabilities into the Montana elder and developmentally disabled abuse prevention act; requiring certain advocates of persons with developmental disabilities to report suspected abuse, sexual abuse, neglect, or exploitation; expanding the list of persons to whom certain confidential information may be released; granting limited immunity to persons who provide or use background or employment screening information regarding an employee's or volunteer's history of abuse, sexual abuse, neglect, or exploitation in making an employment decision; revising definitions; incorporating federal provisions regarding protection and advocacy for persons with developmental disabilities and access by the designated protection advocacy system.

ASSUMPTIONS:
1. This bill is at the request of DFS and clarifies the statutes regarding adult protective services issues.
2. There will be no fiscal impact to DFS.

FISCAL IMPACT:
None

Dave Lewis 2-2-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

BETTY LOU KASTEN, PRIMARY SPONSOR DATE

the kind of work they do and he recommended some of the ways that could be done. He viewed DFS as an agency of community values and he felt they need to encourage debate.

REP. BOHARSKI asked if the different levels of proof were adequate.

Ms. Gilke responded with her understanding of the different levels of the burden of proof. She would not suggest any statutory changes to them.

REP. BOHARSKI understood that some action needed to occur within 48 hours.

Ms. Gilke said the reference to 48 hours was in regard to an emergency removal of a child. If there is imminent risk of harm to a child, the agency may remove the child for up to 48 hours prior to a county attorney filing a petition to have the court review the case.

REP. BOHARSKI asked if probable cause is established, could the department hold the child for 20 days.

Ms. Gilke said that was right.

REP. BOHARSKI felt it should require something beyond probable cause to be able to pull a child out of the home for that period of time. He asked to be convinced otherwise.

Ms. Gilke believed the probable cause level is adequately high at that initial stage of involvement by the agency. The court must grant the department the authority to remove the child and place the child. Should the court believe there is enough evidence to authorize the child's removal while the department completes the investigation, she felt there were adequate checks and balances at the probable cause standard.

Closing by Sponsor:

REP. KASTEN closed with the hope that they would not leave "anyone" in the statute in section 9.

HEARING ON HB 366

Opening Statement by Sponsor:

REP. BETTY LOU KASTEN, HD 99, asked the committee's indulgence to hear a proponent immediately since his time in the area was short. The committee agreed and further agreed to question him immediately after his testimony if needed.

Proponents' Testimony:

Clifford Murphy, President, Montana Advocacy Program, submitted written testimony. **EXHIBIT 11**

Hank Hudson, Director, DFS, declared the department's support.

Paula Crumb presented written testimony. **EXHIBIT 12** .

Hal Wallis Melcher, Helena Attorney, Executive Director of Helena Industries, Montana Association for Independent Disabilities Services, and member of the Abuse Prevention Task Force, spoke in favor of HB 366 which would provide them with another tool for acquiring information in hiring persons who would serve the people properly.

(Tape: 3; Side: A)

Their only concern with the legislation was that the investigative process should be thorough and aggressive, but follow due process principles. They felt that having a third party outside DFS would provide objectivity in the investigative process.

Mary Gallagher, Montana Advocacy Program (MAP), presented testimony in favor of HB 366 and HB 186 with opposition to sections mandating reporting to DFS. She said in reality MAP refers most of the complaints of abuse and neglect to DFS for investigation, but there are times when DFS is perceived, rightly or wrongly, as being either too busy or impartial (sic) and would not be preferred as an agency for referral. There are times when MAP must maintain its independent status in discretion in conducting investigations. She asked the committee to amend both bills to exclude the mandatory reporting requirement and to pass the balance of the bills. **EXHIBIT 13**

Informational Testimony:

A letter with attached proposed amendments from DFS is submitted as **EXHIBIT 14**

An outline of DFS Adult Protective Services is submitted as **EXHIBIT 15**

A letter from **Judith Carlson**, is included as support of HB 366. **EXHIBIT 16**

Andree' Larose, Staff Attorney, MAP, read a letter from **Jack Sands, Board of Directors of MAP,** as a proponent of the bills, with opposition to the mandatory reporting requirements to MAP. **EXHIBIT 17**

A letter from **Curtis Decker, Executive Director, National Association of Protection & Advocacy Systems,** outlining the

objection to the mandatory requirement as referred to in the exhibit above. **EXHIBIT 18**

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. SMITH expressed concern about the statistics for abuse cases being from 90-107 and wanted to learn what standards are used to determine abuse.

Ms. Crumb said the figure was an estimate because tracking and recording abuse in people with disabilities was not done separately from other populations and sometimes was non-existent.

REP. MC GEE asked what constitutes abuse.

Ms. Crumb said for research purposes it is very broadly defined as any physical or mental injury to any person with developmental disabilities (DD).

REP. MC GEE sensed there was a turf battle between a state funded entity and a federally funded entity from the opponents' request that mandatory reporting be eliminated from the bill. He asked if he was right.

Mr. Hudson replied that he would call it a minor turf battle and that they work very well together in most instances. He gave his perspective that he wanted to know about any reports of abuse.

REP. MC GEE asked the same question of the sponsor.

REP. KASTEN said if she had opened on the normal note, she would have told the committee that when she looked at the drafts addressing the same statutes she told the two entities that they must work it out because she would only carry a bill which had been worked out in advance. Had she carried two bills, when it came time to codify them, they would not have fit together. She said there was a turf battle going on.

REP. MC GEE appreciated the candor.

REP. BERGMAN asked for clarification of **Ms. Gallagher's** position and if MAP is a private entity which receives federal funding. She asked where they get their authority and if they only work with DD people.

Ms. Gallagher explained the authorizing provisions for MAP, which are all in federal statutes dealing with protection and advocacy systems for DD, mental illness, other physical disabilities,

race-related issues related to physical disabilities as well as a vocational rehabilitation assistance program.

REP. BERGMAN inquired about the requirements for membership in the group.

Ms. Gallagher answered that it was basically a program which addresses the mandates spelled out in regulations which address abuse and neglect in institutions. There are various criteria for each of the five programs.

REP. BERGMAN asked if a private citizen could also report to DFS. She asked if MAP is a "watchdog for DFS."

Ms. Gallagher said any report of abuse or neglect could go to MAP. In each state there is one designated eligible system for this program.

REP. BERGMAN asked who MAP answers to.

Ms. Gallagher said it reports annually to the federal government and in individual instances of abuse, they may report to DFS or a county attorney.

REP. BERGMAN asked if they have anyone in authority over them to be sure they are complying and making proper decisions.

Ms. Gallagher said their line of authority is to answer to the agencies which fund them such as Department of Education and Department of Health and Human Services.

REP. GRIMES asked if she had said that this legislation would allow them to pursue additional legal opportunities for their clients.

Ms. Gallagher answered, "No, in fact it would create no other authorities or duties than currently exist under federal law.

REP. GRIMES asked if the basic outcome would be to take federal law and make it state statute.

Ms. Gallagher said that was correct. She said there had been a conflict in a few access statutes.

REP. GRIMES asked if they deal with the Boulder facility and she replied that they do.

REP. GRIMES asked if this bill was drafted at the suggestion of the advocacy group or if it was a DFS request or jointly considered.

Mr. Hudson said the part that codifies the federal and state laws had been assessed with MAP for some time. Its purpose was to clarify access to records. The mandatory reporting part was

something the department pursued and it had come up in discussion with provider groups. The purpose of that provision was to solve the question for those provider groups when all abuse and neglect cases would be reported to DFS. The department pursued that and negotiated and discussed at length with MAP how to resolve it. They decided to resolve it through legislation.

REP. GRIMES asked if this access issue would affect the facility at Boulder.

Bob Anderson, Administrator, Special Services, Department of Corrections and Human Services (DCHS), had reviewed the portion of the bill being discussed and they were concerned about the duplications of laws under federal statutes. MAP currently has the authority to access records through federal statutes and sections 9 through 12 contain language which repeats language currently in the federal statute. They think that is a duplication and unnecessary. MAP indicated that they need more clarity because they ran into trouble regarding issues related to files. He said that when they have needed files at the Boulder institution, they have pointed out the federal law and Boulder is quick to comply.

Down the road, there might be more problems because Congress has changed the funding and state statute will remain and then MAP may come in asking for funding to comply. By putting this language in this current bill, it would bless their authority under state statute to continue their lawsuit against the state regarding Eastmont to move and force those residents out of Eastmont by court order into community programs. By putting this in state law, they would have authority to access state records to proceed with their lawsuit against the state.

REP. GRIMES asked if **Mr. Melcher** had ever needed information from the Montana Developmental Center (MDC) facility, and if so had they ever had trouble getting that information.

Mr. Melcher clarified the relationship by saying that the Montana Association for Independent Disabilities Services is an advocate for all DD persons within the state. MDC is not a member of the association. He had never had a problem getting information from MDC and would only be in that relationship when a person was going to leave the institution and go into community services where the providers involved would be discussing the case with them.

REP. SMITH asked if MAP responds primarily to individual concerns and if that was the only referral source they receive.

Ms. Gallagher said that was true and that they might get a complaint about someone not being able to receive services or being neglected in the community. They are individual referrals.

REP. SMITH asked if they would also provide the service in residential facilities.

Ms. Gallagher replied that MAP was supposed to address any facility that is a care and treatment facility.

REP. SMITH asked if she agreed that the primary concern would be to prevent ongoing abuse or neglect and **Ms. Gallagher** agreed.

REP. SMITH asked if not reporting to DFS would actually hinder that potential to prevent ongoing abuse or neglect.

Mr. Gallagher answered, "There are more incidences (sic) where, for instance, neglect has been referred to us as a possible issue. And we are more used to responding to those sorts of situations where there is not, for instance, an imminent threat to someone. I can't recall a situation where we have an abuse referral at the moment it happens. Their situation would be responding to abuse where they saw it, certainly using DFS, in fact for most of the primary investigations. But if there was some situation where there was a conflict with our client, and we were not able to report because of our confidentiality requirement under the federal statutes, that would be the only situation that I can think of in an abuse situation...."

REP. SMITH said, "Then primarily you are dealing with judicial litigation, you may communicate with the department, they may respond and yet you will go ahead and pursue it then in a litigation."

Ms. Gallagher said that was not correct. Their main emphasis is on a resolution toward the solution. Litigation would come way down the line. They address it at a systemic level, she said.

REP. BOHARSKI felt the only area which was contentious was the sharing of information though the working relationship is pretty good. He could imagine the situation where a less-than-model employee in the field would disclose information inappropriately. He felt it might be impossible to function as an advocate if they had to disclose everything to the department. He thought they would want the agency to operate independently from DFS.

Mr. Hudson replied that was the issue the committee would be struggling with in balancing the value of having an independent advocate against the value of the efficiency or duplication in sharing information. He believed that the information received by the department would be handled in such a way as to not allow an employee to use the information to intimidate anyone or hide anything.

REP. BOHARSKI made clear that the groups are not doing the same thing and there is generally a good working relationship.

Mr. Hudson agreed, but said that it did not relieve him of the need to share information on abuse and neglect.

REP. BOHARSKI asked if DFS would find out about the cases sooner or later and **Mr. Hudson** said that was correct.

REP. BOHARSKI asked if there were cases where it would be in the interests of the client that the information was not immediately available to DFS.

Mr. Hudson said they did not think so, but they would benefit from knowing every one.

REP. GRIMES reflected on **Mr. Anderson's** comment regarding the Eastmont lawsuit and asked for further information on how the bill would affect that situation.

Mr. Anderson said that if Eastmont did not close, MAP would force clients out of the institution into community programs for basically the same reasons DCHS requested Eastmont be closed. The lawsuit will proceed if Eastmont doesn't close and MAP has authority to do that and to access records under federal law. Sections 9 through 12 of this bill repeat that authority under state law and that would bless their authority to do it while they already have authority under federal law. It really wouldn't make any difference if it were in this bill, except that it would be a duplication and there is no need for state statute when they already have federal authority.

Closing by Sponsor:

REP. KASTEN referenced testimony and asked **REP. KOTTEL** to review page 9 of HB 366 and compare it with HB 186. She said the definition of abuse is found in section 4 of this bill. Section 17 would require a two-thirds vote because of the immunity granted in the bill. She asked the committee to settle the turf battle discussed during the hearing.

Motion: **REP. MC CULLOCH MOVED TO ADJOURN.**

{Comments: This set of minutes is complete on three 60-minute tapes.}

EXHIBIT 11
DATE 2/9/95
HB 366

MONTANA ADVOCACY PROGRAM, Inc.

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Helena, Montana 59624

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(VOICE - TDD)
Fax #: (406)444-0261

February 9, 1995

Bob Clark, Chairperson
House Judiciary Committee
State Capitol
Helena, Montana

Re: HB 366 and HB 186

Dear Chairman Clark and Members of the Committee:

For the record, my name is Clifford Murphy and I am the President of the Board of Directors for the Montana Advocacy Program. I am also a member of the Mental Health Association of Montana, the State and Local Youth Advisory Councils of the Department of Family Services and the Montana Committee for Emotionally Disturbed Children.

Testimony in Support of HB 366

Montana Advocacy Program is a private, non-profit organization designated by the State of Montana to protect and advocate the rights of persons with disabilities. MAP is fully federally funded and thus, has the rare distinction of being a "funded federal mandate."

The Board of Directors of MAP is a group of persons from various walks of life and with varied outlooks on social events, but with a common interest in advocating for the rights of persons who are seriously disabled. We volunteer our time. By law, my duty and the duty of my colleagues is to determine policy for the agency within the limits of federal laws governing the program and to attempt to develop the specific program so as to achieve maximum effectiveness in providing protection and advocacy for persons with disabilities.

On behalf of this Board, I urge you to support HB 366 to help us achieve greater effectiveness.

HB 366 codifies in state law the duties and authorities of two MAP programs, the Protection and Advocacy for Persons with Developmental Disabilities (PADD) program and the Protection and Advocacy for Individual Rights (PAIR) program. When Montana received funds under the protection and advocacy statutes, the Governor gave assurances that our program has these authorities. What we seek to do in HB 366 is merely to ensure that state law is consistent with the assurances already given by the Governor, so that we can more effectively perform our advocacy responsibilities. HB 366 does not broaden MAP's authority in any way.

Our primary concern is that our authority to access records, persons and facilities be clear in state law. Currently, our staff sometimes face long delays in obtaining records which are needed to effectively represent a client. These delays can cause harm to a client. The clarification contained in HB 366 will help eliminate delay when MAP is asked to advocate on a client's behalf.

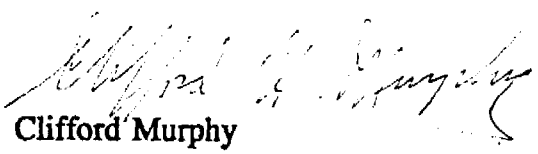
<u>Opposition to Mandatory Reporting Requirement in HB 366 and HB 186</u>

There is one portion of HB 366 to which we cannot lend our support and that is the provision in Section 6 which requires that MAP report all incidents of suspected abuse or neglect uncovered by the agency to the Department of Family Services. We oppose a similar provision in HB 186.

The Department of Family Services and MAP share a common goal: to eliminate abuse and neglect of persons with disabilities. Both agencies have authority and responsibility to investigate incidents of neglect and abuse. Our Board and staff do not believe that requiring MAP staff to report to DFS all incidents it encounters will further the common goal of both agencies. MAP is viewed by some clients or potential clients as a more independent agency than DFS; some of our referrals are from persons who perceive (whether rightly or wrongly) that DFS is not independent from servicing agencies and therefore not likely to provide the remedy they seek. Such distrust, whether or not justified, will carry over to MAP if MAP has to report all cases of neglect or abuse to DFS. The result will be that fewer incidents of neglect or abuse will be uncovered.

In conclusion, I urge you to support HB 366. However, I respectfully request that you attach an amendment to delete the mandatory reporting provision. The common goal of DFS and MAP will be furthered by that elimination. Thank you for your time.

Sincerely,



Clifford Murphy
President, Board of Directors

DATE 2/9/95
HB 366

Mr. Chairman and Committee Members:

For the record, my name is Paula Crumb. For the past two (2) years I have worked as an Abuse Prevention Specialist on a Developmental Disabilities Planning and Advisory Council funded Project. The goal of this project was to reduce the incidents of abuse, neglect and exploitation of persons with developmental disabilities in Montana. I am testifying today because I am a strong advocate for people with developmental disabilities. In my research I found that on a national level it is estimated that between 90 and 100% of persons with developmental disabilities have experienced abuse at some point in their lives.

Throughout the life of this project, I worked in conjunction with the abuse prevention task force. This body is made up of members from the Developmental Disabilities Division (DDD), the Department of Family Services(DFS), the Montana Advocacy Program (MAP), the Department of Justice,(DOJ) parents of persons with developmental disabilities, and providers of community-based services to people with developmental disabilities. The task force established the goals of the project, set the direction for research and fixed on project outcomes.

Major outcomes of the project included: (1) a requirement that all contracted provider organizations conduct a thorough screening and background check, including a statewide check through the DOJ, on all prospective employees; (2) the writing and statewide distribution of a comprehensive handbook covering best practices on screening and hiring good people to work in service provider agencies; (3) the production and statewide distribution of a video, brochures and posters that are used to train newly hired staff and remind veteran staff how to prevent, recognize and report abuse when and if it occurs; and (4) the identification of legislation that would be pursued by the DFS during 1995 session of the legislature. This includes H.B. 366. These changes will benefit persons with developmental disabilities as well as the agencies providing support and assistance to these individuals.

I support this legislation. In particular sections 52-3-813 and section 52-3-814. Section 52-3-814 allowing immunity from liability when information is exchanged in good faith. With the ever present danger of costly litigation this section is vital to stimulate an open exchange of information. This immunity assists the employer to feel comfortable about using information given when making a hiring decision and ultimately helps to protect people with developmental disabilities. Section 52-3-813 allowing the department to give information for the purpose of background screening for prospective employees or volunteers. Currently, there is access to statewide conviction information, but many individuals who have abused and are substantiated by the department are not charged with a crime by the county attorney. Having access to the department's information is another way for providers to gain information about a prospective employee and assure that

people with developmental disabilities are free from abuse. My only concern with this section is that the appeal process available is an administrative review through the same department that makes the case determination. If we are denying employment or taking other personnel action based upon the department's decisions, I believe it is necessary to build in due process procedures up front by providing for a fair hearing process that allows substantiated individuals to appeal decisions before an impartial body.

EXHIBIT 12
DATE 2/9/95
HB 366

MONTANA ADVOCACY PROGRAM, Inc.
316 North Park, Room 211
P.O. Box 1680
Helena, Montana 59624

(406)444-3889
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Fax #: (406)444-0261

February 9, 1995

Bob Clark, Chairperson
House Judiciary Committee
State Capitol
Helena, Montana

Re: HB 366 and HB 186

For the record, my name is Mary Gallagher and I am the acting Executive Director of the Montana Advocacy Program. I would like to submit the following testimony in support of HB 366, but in opposition to those provisions in HB 366 and HB 186 which mandate the reporting of incidents of abuse and neglect to the Department of Family Services.

Opposition to mandatory reporting requirement in HB 366 and HB 186

I want to expand upon the testimony of our Board President, Cliff Murphy, and explain further why MAP is opposed to the mandatory reporting requirement. First, let me explain more about the protection and advocacy system programs. Basically, the programs have two duties: (1) to independently investigate incidents of abuse or neglect involving persons with disabilities; and (2) to pursue legal and other appropriate remedies on behalf of persons with disabilities to ensure enforcement of their rights. We believe the reporting requirement would improperly interfere with these advocacy duties and, in turn, negatively impact our client.

1. The reality is that MAP refers most complaints of abuse and neglect to DFS for investigation. However, there are times when DFS is perceived as being biased. This is especially true in rural areas where there may be only one DFS social worker; the DFS worker and manager of the facility being investigated are often friends. One advocate at MAP has received at least six calls in the past year from people who called our agency primarily because they did not believe DFS was effective. Another advocate received a referral when DFS declined to investigate because the only witness to the incident was developmentally disabled and the DFS worker believed, therefore, that the witness was not credible. Before attempting to conduct our own investigation, the advocate approached DFS administration and the case was re-opened for an investigation. So please do not think that MAP is refusing to report to DFS and putting clients at risk. MAP does report most incidents to DFS, but there are times when MAP is sought out because MAP is viewed as more independent. At those times, MAP must retain the discretion to conduct an independent investigation without involving DFS.

2. When conducting an investigation, MAP must be able to control the release of information in a strategic manner: We must be able to ensure that the release of information does not

compromise the integrity of the investigation, expose vulnerable persons to retaliation, or interfere with the potential legal remedies.

3. The proposed reporting requirement would, in most cases, violate MAP's obligation under federal law to maintain confidentiality. MAP staff would be at risk of violating confidentiality provisions of federal law whenever they reported an incident of abuse or neglect to DFS, and at risk of violating the state reporting requirements whenever they decided not to report an incident of abuse or neglect. I do not believe our employees should be put in that position whenever they try to represent an individual.

4. The clause which allows MAP to refrain from disclosing information if it "would violate provisions of federal or state law" is of little comfort or direction. It would be a violation of federal law to compel disclosure in any circumstance where MAP exercises the discretion, in the interest of the client, to refrain from reporting. This would mean that the mandatory reporting requirement would only apply to those situations in which MAP chooses to report. Yet those reports which are made voluntarily would be made with or without this statutory requirement.

5. There is a real risk that a statutory reporting requirement could be used by facilities who are being investigated to hinder an investigation initiated by MAP. The facility could seek criminal prosecution of MAP for not first reporting to DFS.

6. As currently drafted, MAP would be required to disclose information to DFS even when MAP is investigating a DFS facility. This would not only seriously undermine the investigation; it is a clear violation of federal law. A P&A cannot be required to disclose to the facility being investigated the substance of a report of abuse or neglect. [See February 8, 1994 opinion letter issued by the Administration on Developmental Disabilities (within the Department of Health and Human Services), which administers the DD Act.]

7. This requirement will cause more confusion in the field about MAP's role and MAP's authority to conduct investigations. MAP already faces resistance, due in part to the lack of clarity in state law about MAP's duties and authorities. There would be more confusion about how MAP could be an agency with separate investigative authority, yet be required to report to DFS.

<u>Support of HB 366</u>

We urge your support of the provisions of HB 366 which clarify in state law the responsibilities and authorities of the state protection and advocacy system.

1. The portions of this bill clarifying MAP's responsibilities have two components. There are two sections, Sections 11 and 12, which recognize that the PADD and PAIR programs are designated protection and advocacy systems in the State of Montana and which incorporate federal provisions describing MAP's duties and authorities into state law. A section very similar to these was passed by the Montana legislature two sessions ago with respect to the Protection and Advocacy for Individuals with Mental Illness (PAIMI) program. Second, this bill amends those sections in state law which restrict access to records to include the PADD, PAIR and

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PAIMI in the list of identified entities with access authority.

2. Our primary concern is that our authority to have access to persons, records and facilities be clearly stated in state law. Currently, our staff sometimes face long delays in obtaining records which are needed to effectively represent a client. These delays can cause harm to a client, especially if we are prevented from having the access we need to conduct an investigation of abuse or neglect. This happens because state law provisions on confidentiality which list those persons or entities who are authorized to gain access to records do not currently list the P&A system. Yet, most providers rely upon state law when deciding whether to allow access.

As Cliff Murphy testified, HB 366 does not broaden MAP's authority in any way; it simply clarifies the law to eliminate the conflict between state law and the assurances given by the Governor about MAP's authority when Montana accepted federal funds.

In closing, I urge you amend HB 366 and HB 186 to delete the requirement that MAP report incidents of abuse and neglect to DFS and then pass HB 366. Thank you for your time.

Sincerely,

Mary Gallagher

Mary Gallagher
Acting Director

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HB 366

DEPARTMENT OF FAMILY SERVICES

MARC RACICOT, GOVERNOR

(406) 444-590
FAX (406) 444-595

STATE OF MONTANA

HANK HUDSON, DIRECTOR

PO BOX 8005
HELENA, MONTANA 59604-800

February 9, 1995

DEPARTMENT OF FAMILY SERVICES TESTIMONY IN SUPPORT OF HB 366

The Department of Family Services urges your support of HB 366. The bill will clean up language in the statutes related to adult protective services, such as changing references to "developmentally disabled" people to "persons with developmental disabilities." It also consolidates redundant laws and repeals unnecessary laws.

The bill expands the mandatory reporting law by including advocates and guardians as people who must report suspected abuse or neglect of the elderly and persons with developmental disabilities. The release of confidential information is expanded to include a broader range of people who serve the client population, especially providers of services to the elderly and persons with developmental disabilities. For example, if a nursing home operator asked for information regarding an applicant who would be providing direct, unsupervised care to an elderly person, the agency could inform the provider whether there was protective services information indicating that the person posed a risk to clients.

Along with authorizing the release of information to providers, the bill provides limited immunity to persons giving or receiving such information.

Other provisions of the bill deal with the advocacy and protection program in Montana and will be addressed by staff from that program.

Proposed Amendment to HB 366

1. Page 9, line 17.
Following:"systems"
Strike: "authorized under the provisions"
Insert: "pursuant to the authorization"

2. Page 14, line 9.
Strike: "ischarge"
Insert: "discharge"

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HB 366

MONTANA DEPARTMENT OF FAMILY SERVICES

ADULT PROTECTIVE SERVICES

PROGRAM DESCRIPTION:

Protective services are provided by DFS community social workers to persons age 60 and older and to mentally or physically disabled adults who are at risk of physical or mental harm due to abuse, sexual abuse, neglect, or exploitation. DFS social workers investigate any referrals of alleged abuse, sexual abuse, neglect, or exploitation. If the investigation indicates the alleged victim has been or is being abused, sexually abused, neglected, or exploited the social worker develops a plan of services to eliminate or reduce the risk to the aged or disabled victim.

GOALS:

- Provide each client with a choice in selecting or refusing services insofar as he/she is able.
- Provide the necessary services and supports to allow the client to do as much for him or herself as he or she is able.
- Provide the least restrictive services to allow the client to function at the highest independent level possible.
- Protective services will only be provided until the risk is reduced or removed or until the client refuses to accept services.

SERVICES PROVIDED:

DFS community social workers provide or arrange for most of the protective services that are provided to victims. DFS home attendants and human service aides also may provide protective services in case specific situations. In rural areas the local DFS social worker is not only responsible for adult protective services but also must provide child protective services. Adult protective services that the DFS social worker can provide or arrange for can include:

1. Investigation and assessment of referrals.
2. Utilization of family and community resources.
3. Strengthening current living situations.

4. Removal from unsafe situations.

5. Development and protection of financial resources.

6. Legal intervention. (could include court ordered investigations, arranging for restraining orders, or arranging or obtaining full or limited guardianships)

7. Public awareness activities as time permits to assure that victims of abuse, neglect, or exploitation are identified and provided services.

BUDGET AND FUNDING:

Please refer to the department's overall budget. The department does not have a separate budget for adult protective services since most of the field staff that provide these services are also responsible for providing protective services to children.

PERFORMANCE INDICATORS:

1. DFS staff completed investigations of 694 cases of adult abuse, neglect or exploitation in FY 87. In FY 94 DFS staff completed 1480 investigations. The number of completed APS investigations more than doubled in the past seven years.

   Based on historical data, it is projected that DFS adult protective services workers will investigate 1628 referrals in FY96 and 1791 referrals in FY97.

2. DFS staff provided extensive adult protective services to 317 clients in FY 87 and to 503 clients in FY 94.

   Based on historical data, it is projected that DFS staff will provide extensive adult protective services to 553 clients in FY 96 and to 608 clients in FY 97.

   It is projected that DFS staff will provide brief adult protective services to an additional 359 clients in FY 96 and to 395 clients in FY 97. (Brief services could include identifying services other than adult protective services, referring clients to those services, assisting clients to access those services, and follow up.)

3. DFS will continue to contract with St. Vincent's Hospital in Billings to operate a 24-hour hot-line. The hot-line will process 216 calls in FY 96 and 238 calls in FY 97.

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HB 366

AN ACT GENERALLY REVISING THE LAWS RELATING TO ADULT PROTECTIVE SERVICES;....EXPANDING THE LIST OF PERSONS TO WHOM CERTAIN CONFIDENTIAL INFORMATION MAY BE RELEASED;...GRANTING LIMITED IMMUNITY TO PERSONS WHO PROVIDE OR USE BACKGROUND OR EMPLOYMENT SCREENING INFORMATION REGARDING AN EMPLOYEE'S OR VOLUNTEER'S HISTORY OF ABUSE...

February 8, 1995

I am Judith H. Carlson, citizen, testifying in favor of HB 366. As some of you know, I have been involved in human services in Montana for many years, most recently as a lobbyist for several organizations and as a member of an Abuse Prevention Task Force made up of providers of services to persons with developmental disabilities.

One problem which has come up from time to time over the years has been abuse by staff of residents or users of services. More than once, the same person will be abusive in one agency, be fired, and then hired by another similar agency. Because of the laws regarding fair treatment of personnel, it is not possible for one agency to tell another agency that the applicant was fired because of abuse.

Our Task Force considered many ways of preventing abuse in the first place. Training has been beefed up and increased through use of written and video materials. This is a major method of prevention of abuse.

But one area which kept coming up was the one where abusive persons can keep making the rounds of human service agencies. If they are never actually convicted of a crime, there is no record.

Certainly we are concerned about protection of the rights of employees. We do not want to be involved in spreading unfounded rumors. But there must be a first consideration for the safety of the individuals under the care of the state. The parts of this bill which will help considerably with this are : 1) the new section specifying that information can be shared with an employer who is screening applicants, and 2) the new section providing immunity from civil and criminal liability for a person who provides information about an employees.

My hat is off to Representative Betty Lou Kasten for sponsoring this needed piece of legislation.

Judith H. Carlson
408 Washington Drive
Helena, MT 59601

EXHIBIT 17
DATE 2/9/95
HB 366

Jack E. Sands
ATTORNEY AT LAW

THE GRANITE BUILDING
100 NORTH 27TH STREET
BILLINGS, MONTANA 59101
406/245-2591

February 8, 1995

The Honorable Bob Clark
Chairman
House Judiciary Committee
Capitol Station
Helena, MT 59620

RE: Proposed amendment to HB 366 and HB 186

Dear Chairman Clark and Members of the Committee:

I am writing as a private Montanan and one of the ten volunteer members of the Board of Directors of the Montana Advocacy Program, Inc. MAP's Board of Directors opposes those provisions of HB 366 and HB 186 which require that MAP report all incidents of suspected abuse or neglect to the Department of Family Services, and respectfully requests that those provisions be amended out of the two bills.

Before explaining why, it might be helpful to the Committee to understand MAP's unique role in our State. MAP is federally funded but is governed by a Board of private Montanans. The federal statutes and regulations governing the programs MAP administers contain reporting and administrative guidelines, but its Board of Directors establishes MAP's priorities, goals, and objectives.

MAP's job, essentially, is to be a law firm for some of Montana's most disadvantaged-- the developmentally disabled, mentally ill, brain-injured, and others who are disabled through no fault of their own. MAP's mandate is to regard these Montanan's as our legal clients-- to serve their interests, to be guided by their commands, and to owe loyalty to no others, particularly to State or federal government agencies, to the institutions in which our clients are sometimes confined, or to those who provide services to them. MAP's role is to make the laws work for our clients, from their perspective. Thus MAP is directed by Montanans and serves Montanans.

With this background in mind, let me outline the reasons why we request that the mandatory reporting provisions of HB 366 and HB 186 not apply to MAP:

First, they interfere with MAP's role to advocate for the interests of our clients. Our clients will not trust us if they cannot confide in us.

Second, they would often violate the attorney- client privilege.

Third, they violate federal law. Those laws require MAP to maintain client confidentiality. The specific legal references are contained in the attached letter from the National Association of Protection and Advocacy Systems and can be explained more fully by MAP's attorney, Andree Larocc.

Fourth, the qualifier allowing MAP to avoid mandatory disclosure if doing so would "violate provisions of federal or state law" makes no sense. The law is supposed to provide direction to us. As a former navigator of merchant ships, I can tell you that I never read a nautical chart that said: "Go west unless going in that direction would be wrong." It is your obligation as lawmakers to determine what the law is, what our direction should be. It is neither good public policy nor fair to require such a determination on the spur of the moment as each individual case arises, which seems to be implied by the language.

Fifth, these provisions interfere with MAP's independence, and we can only be effective if we are independent. A case that MAP investigates may be abuse or neglect by a DFS employee or may be a case where DFS has refused to act. It might not be in our client's interest to prematurely warn DFS of MAP's strategy or even its involvement.

In the overwhelming number of cases, MAP has and will continue to report to and cooperate with DFS. But for the reasons outlined above, we firmly believe that the provisions requiring MAP to report suspected abuse and neglect to DFS should be removed from the two bills.

Thank you for providing MAP with the opportunity to address our concerns to you. I regret that previous commitments made it impossible for me to express these views personally. If you should have questions that are not adequately addressed by Andree, she or I would be pleased to supplement these remarks in any manner desired.

Sincerely,

Jack Sands
Member of the Board of Directors
Montana Advocacy Program, Inc.

JS/1

DATE 2/9/95
HB 366

NAPAS National Association of Protection & Advocacy Systems

Executive Committee

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Executive Director

Curtis L. Decker, J.D.

February 8, 1995

Bob Clark, Chairman
House Judiciary Committee
State Capitol
Helena, Montana

Dear Chairman Clark and Members of the Committee:

The National Association of Protection and Advocacy Systems (NAPAS) wishes to submit this letter to you and the House Judiciary Committee as testimony on HB 366. NAPAS is a voluntary membership organization for the nationwide system of protection and advocacy system agencies (P & As). P & As were established under a number of federal statutes (which, as is discussed below, would be impacted by HB 366) to provide legal representation and related advocacy services on behalf of all persons with disabilities. NAPAS is authorized by the federal agencies which administer these statutes to provide P & As with standards on the implementation of these requirements, as well as related training and technical assistance.

We understand that the Montana Department of Family Services (DFS) is proposing to require the Montana Advocacy Program (MAP) -- the designated P & A for the State of Montana -- to report all incidents of suspected abuse or neglect uncovered by the agency to the DFS, "unless disclosure would violate provisions of federal or state law."

We conclude that such a mandatory reporting requirement would conflict with the confidentiality obligations imposed on MAP by the statutes and regulations governing the P & A system; in addition, it would generally interfere with MAP's authority under these laws to investigate and take corrective action with regard to incidents of abuse and neglect. Accordingly, we urge the Legislature not to pass the reporting requirement.

The specific statutory programs that would be affected by this legislation are the following: the Developmental Disabilities Assistance and Bill of Rights (DD) Act (42 U.S.C. 6000 et seq.), the Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act (42 U.S.C. 10801 et seq.), and the Protection and Advocacy for Individual Rights (PAIR) Program under the Rehabilitation Act (29 U.S.C. 794e) (Detailed information describing these statutory programs is contained in an attachment to this letter.)

The three statutory programs (which, individually, serve distinct populations of persons with disabilities), all generally require P & As to strictly maintain the confidentiality of all personal information about persons served by the P & A (including, but not limited to, information contained in client records).[1] This obligation extends to information provided to the P & A concerning persons who may have been subject to abuse or neglect. While there are some very narrow specific exceptions to this confidentiality obligation (e.g., information may be released with the written consent of a client or his or her legal representative), it is clear that the proposed mandatory reporting requirement would, in most cases, violate the obligation.

Further, insofar as the reporting requirement would compel the disclosure of information about an individual communicated to an attorney in confidence, it would lead to violations of the attorney-client privilege.

Moreover, the reporting requirement would improperly interfere with the P & A's primary advocacy duties under the P & A statutes. Under all there of these programs, MAP has two related obligations -- to (1) independently investigate incidents of abuse or neglect involving persons with disabilities, and other violations of their rights; and (2) pursue legal and other appropriate remedies on behalf of persons with disabilities to ensure the enforcement of their constitutional and statutory rights.

The leading cases interpreting the P & A statutes have held that P & A agencies must have unrestricted discretion to independently carry out these mandates. Mississippi Protection and Advocacy System, Inc. v. Cotten, No. J87-0503(L) (S.D. Miss. August 7, 1989), aff'd, 929 F2d 1054 (5th Cir. 1989); Robbins v. Budke, 739 F.Supp. 1479 (D. N.M. 1990).[2] All P & As, including MAP, must have unrestricted discretion to determine, in the interest of a client, whether to conduct a particular investigation independently, and to refrain from making a referral to an outside agency. P & As must be able to control the release of information in a strategic manner: The agency must be able to ensure that the release of information does not compromise the integrity of the investigation, expose vulnerable persons to retaliation, or interfere with

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[1] These confidentiality requirements are mandated by the statutes themselves and by their implementing regulations. See 45 CFR 1386.21 (DD Act), 34 CFR 381.34 (PAIR Program), 59 Federal Register 64367, December 14, 1994 (proposed regulations implementing the PAIMI Program).

[2] Federal funding is received by Montana to provide protection and advocacy services for persons with disabilities on condition that the P & A has an effective system implementing the federal mandates discussed above. The court in the Cotten case held that "the state cannot satisfy the requirements of the [DD Act] by establishing a protection and advocacy system which has this authority in theory, but then taking action which prevents the system from exercising that authority."

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potential legal remedies.[3] The mandatory reporting requirement would interfere with all of these authorities.

It might be argued that the proposed legislation would not require MAP to disclose information in a manner which interferes with these federal mandates, inasmuch as the proposal would permit the P & A to refrain from reporting where to do so "would violate provisions of federal or state law." However, as discussed above, in many cases such reporting would clearly violate federal law. Therefore, this exception essentially swallows the rule -- and there is no need establish a statutory reporting requirement.

Moreover, the reporting requirement would place MAP in the untenable position of risking violation of federal confidentiality requirements every time it reported an incident of abuse or neglect to DFS. Conversely, MAP potentially would be subject to prosecution whenever it determined that reporting to DFS would be contrary to its federal obligations. In either case, the burdens placed on MAP would severely undermine its ability to carry out its obligations under the P & A statutes.

Thank you very much for considering our concerns. If you have any questions concerning this matter, please do not hesitate to contact me or Gary Gross of my staff.

Sincerely,

Curtis L. Decker/jdg

Curtis L. Decker
Executive Director

Attachment

cc: Administration on Developmental Disabilities, HHS
Center for Mental Health Services, HHS
Rehabilitative Services Administration,
Department of Education

---

[3] This principle was clarified in a February 8, 1994 opinion letter issued by the Administration on Developmental Disabilities (within the Department of Health and Human Services), which administers the DD Act. That letter states that a P & A cannot be required to disclose to a third party the substance of a report of an incident of abuse or neglect or the basis of the P & A's belief that such an incident has occurred. The agency concluded that "disclosure of such information would compromise the effectiveness and integrity of the investigation and could expose sources and already vulnerable clients to retaliation."

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Michigan

Region VI
James Comstock-Galagan
Texas

Region VII
Cynthia Schloss
Missouri

Region VIII
Barbara Braun
North Dakota

Region IX
Kevin Christensen
Nevada

Region X
Jerry Johnsen
Washington

Territories
Minareta Thompson
American Samoa

At-Large
Cathy Costanzo
Massachusetts

At-Large

STATE PROTECTION AND ADVOCACY SYSTEMS

Protection and Advocacy (P & A) Systems were created by Congress and are mandated to provide legal assistance and related advocacy services to people with disabilities. P & A Systems include: Protection & Advocacy for Persons with Developmental Disabilities; Protection & Advocacy for Individuals with Mental Illness; and most recently, Protection & Advocacy for Individual Rights.

P & A's were initially developed to address public outcry related to the abuse and neglect and lack of programming in state institutions for persons with disabilities.

Protection & Advocacy Systems for Persons with Developmental Disabilities (PADD) were originally established by the Developmental Disabilities Assistance and Bill of Rights Act of 1975 (Public Law 94-103), which mandates that each state and territory establish a protection and advocacy system by October 1, 1977 as a condition for receiving its basic state grant allotment under the Act. Agencies established to provide advocacy services must have the ability to pursue legal, administrative, and other appropriate remedies to protect the rights of individuals with developmental disabilities under federal and state law. The Governor in each state designates the P & A System, and provides assurances that the System is independent of any service provider.

Protection & Advocacy Programs for Individuals with Mental Illness (PAIMI) were established in 1986 with the passage of Public Law 99-319. It is modeled after PADD. The program is mandated to protect the rights of persons with mental illness under federal and state law, and to investigate allegations of abuse and neglect of persons residing in residential care or treatment facilities. The agencies designated to serve as the PADD systems in each state and U.S. territory are responsible for implementing the PAIMI program.

The **Protection and Advocacy for Individual Rights (PAIR)** program was authorized by Congress under the Rehabilitation Act of 1978, but no funds were appropriated for this program until fiscal year 1991. Under PAIR, P & A's have authority to pursue legal, administrative and other appropriate remedies for all persons with disabilities who are not eligible for services under the PADD or PAIMI programs. In fiscal year 1994, Congress appropriated $5.5 million, hitting the trigger for formula grant status ($100,000 for states, $50,000 for territories). As a result, each PADD will now receive funds to operate a PAIR.

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P & A Activities

P & A activities may include:

(1) investigating, negotiating or mediating solutions to problems expressed by persons eligible for P & A services;

(2) providing information and technical assistance to individuals, attorneys, governmental agencies, service providers and other advocacy organizations;

(3) providing legal counsel and litigation services to eligible persons and groups (who satisfy the established priorities of the P & A for the provision of services); and

(4) providing education and training for staff, governing boards and advisory councils, volunteers, service delivery professionals, constituency groups, and the community.

In addition, P & A's interact with elected and appointed officials to share information which will assist policy makers in making legislative and administrative changes which benefit persons with disabilities.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 2-9-95

BILL NO. HB 366 SPONSOR(S) Rep. Kasten

PLEASE PRINT PLEASE PRINT PLEASE P

NAME AND ADDRESS	REPRESENTING	Support
~~Karen Kasten~~	~~Chairman Committee/MT~~	~~Op~~
Paula Crumb	No Affiliation	✓
Rhoda Miller	Regional Services/MAIDS	✓
MARY ALICE COOK	ADV. for MT'S CHILDREN	✓
Bob Anderson	DCHS	✓
mary Gallagher	MAP	✓
Andrée Larson	Montana Advocacy Program	✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

EXECUTIVE ACTION ON HB 366

Motion: **REP. CAREY MOVED HB 366 DO PASS.**

Discussion: Members of the committee discussed informally the problems with the bill which included the mandatory reporting requirement to the Department of Family Services (DFS) by independent advocacy groups and the access to records as well as the immunity clause.

Motion/Vote: **REP. GRIMES MOVED TO TABLE HB 366. The motion carried unanimously.**

EXECUTIVE ACTION ON HB 186

Motion: **REP. MC GEE MOVED HB 186 DO PASS.**

Discussion: The Chairman reminded the committee that the bill had been amended twice in previous action by the committee.

Motion: **REP. KOTTEL MOVED TO AMEND PAGE 11, LINE 4 FOLLOWING 41-3-205, BY INSERTING "AND SUBSTANTIATED BY THE DEPARTMENT,"**

Discussion: **REP. HURDLE** wanted to clarify what is meant by substantiation because she was concerned about the substantiation process.

REP. BOHARSKI asked what subsection (2) provided.

REP. KOTTEL said that prior to the amendment, if a person would receive information from either of the two sections, it could be used as a basis for termination from employment and the employer would be immune from any civil liability in terms of wrongful discharge unless they acted in bad faith in the termination. The amendment would attempt to put balance back with the employer's right to protect children from people who had not yet been convicted of child endangerment crimes and also protect the rights of employees from mere allegations in the file. The amendment would require that the department substantiate the information or allegation.

REP. BOHARSKI asked if it related specifically to employees who are involved in activities with children and **REP. KOTTEL** affirmed that.

REP. HURDLE said that DFS has a blacklist of people who are refused payment and employment, even some who are still doing child care, because a DFS employee had "substantiated that an allegation was made." She said they have cases in court now which this relates to and she thought that was why DFS had included it in the bill.

REP. MC GEE said that was an example of enforcement versus injunction.

REP. HURDLE asked if that meant they were saying that the county attorney should not be able to do that.

REP. MC GEE said the county attorney would not stand at the door and that was the point. The county attorney might order that or prosecute that, but then he would direct the sheriff to enforce it.

CHAIRMAN CLARK said ask is one thing, ordered is another.

REP. HURDLE asked if that would tie his hands and the answer was, "no."

Vote: The DO PASS motion carried 16 - 2. REPS. SHEA and HURDLE voted no. (REPS. TREXLER and KOTTEL voted by proxy.)

EXECUTIVE ACTION ON HB 366

Motion: REP. LOREN SOFT MOVED TO RECONSIDER TABLE ACTION ON HB 366. The motion carried 17 - 2. REPS. WYATT and HURDLE voted no. (REP. TREXLER voted by proxy.)

Motion: REP. SOFT MOVED HB 366 DO PASS.

Motion: REP. SOFT MOVED THE AMENDMENTS. EXHIBIT 1

Discussion: REP. SOFT said that all of the references to the Montana Advocacy Program (MAP) had been deleted from the bill.

REP. HURDLE remembered that the committee's original objection to the bill concerned the requirement for MAP to report abuse cases to the Department of Family Services (DFS).

REP. GRIMES recalled that the objection was that something that was already federally mandated did not need to be state law and if all of that had been removed, he wanted to know what was left of the bill.

Without objection from the committee, **Ann Gilke, DFS attorney,** explained what had occurred. She said they had removed all the references to mandatory reporting by MAP, codifying their federal authorizing statutes, and their access to records. What would remain would be an expansion of the confidentiality of the records which DFS possesses and to whom they may release those records. It also would provide for limited immunity in certain hiring practices.

REP. SOFT said they had amended that section previously on page 9.

REP. DEB KOTTEL said they had inserted, after the comma, "that is substantiated by independent corroboration by the department."

REP. MC GEE asked for a repetition of the purpose of the bill with these amendments.

Ms. Gilke said they wanted to make it consistent with child protective services and to respond to the criticisms and concerns that the agency hides behind confidentiality. She expanded on that answer.

REP. MOLNAR referred to her testimony that under limited conditions the information would be released to the media and asked what those would be.

Ms. Gilke pointed it out on page 8, line 3 and said that it was limited to factual information regarding how the case was handled without violating the privacy rights of the client. Those who handle developmentally disabled (DD) case management were very interested in the immunity section being a part of the bill.

CHAIRMAN CLARK asked if that meant the language on page 8 remained in the bill.

Ms. Gilke said that was correct.

Mr. MacMaster said they did not amend code section 8 of the bill, but had amended the Youth Court Act section, 41-5-601, MCA. What this bill would amend is not the code section which they had previously amended to require that substantiation.

CHAIRMAN CLARK said his question was on section 7, page 8, if they were leaving the language in the bill.

Ms. Gilke said they were.

Vote: **The motion to adopt the amendments carried unanimously,**

Motion/Vote: **REP. SOFT MOVED HB 366 DO PASS AS AMENDED. The motion carried 19 - 0. (REPS. TREXLER and CAREY voted by proxy, all other members were present.)**

HEARING ON HB 566

Opening Statement by Sponsor:

REP. RICK JORE, HD 73, said HB 566 was a revision of section 28 in the Montana Constitution which would be a referendum to the people. It would change the philosophy and principles of punishment for crime from prevention and reformation to the principles of punishment of the convicted and restitution to the victim by the convicted.

HOUSE STANDING COMMITTEE REPORT

February 17, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 366** (first reading copy -- white) **do pass as amended.**

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, lines 8 and 9.
Following: ";" on line 8
Strike: the remainder of line 8 through the end of line 9.

2. Title, lines 14 through 16.
Following: ";" on line 14
Strike: the remainder of line 14 through ";" line 16

3. Title, line 16.
Strike: "50-16-603,"

4. Title, line 17.
Following: "52-3-804,"
Strike: "52-3-811,"
Following "52-3-813,"
Insert: "AND"
Strike: "53-20-161, AND 53-21-166,"

5. Page 1, line 23 through page 2, line 15.
Strike: section 1 of the bill in its entirety
Renumber: subsequent sections

6. Page 5, line 7 through page 6, line 15.
Strike: section 6 of the bill in its entirety
Renumber: subsequent sections

2/17
Committee Vote:
Yes 19, No 0.

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7. Page 9, line 14 through page 15, line 8.
Strike: sections 9 through 12 of the bill in their entirety
Renumber: subsequent sections

8. Page 15, lines 22 through 24.
Strike: section 16 of the bill in its entirety
Renumber: subsequent sections

-END-

EXHIBIT 1
DATE 2/17
HB 366

Amendments to House Bill No. 366
First Reading Copy

For the Committee on the Judiciary

Prepared by John MacMaster
February 17, 1995

1. Title, lines 8 and 9.
Following: ";" on line 8
Strike: the remainder of line 8 through the end of line 9.

2. Title, lines 14 through 16.
Following: ";" on line 14
Strike: the remainder of line 14 through ";" line 16

3. Title, line 16.
Strike: "50-16-603,"

4. Title, line 17.
Following: "52-3-804,"
Strike: "52-3-811,"
Following "52-3-813,"
Insert: "AND"
Strike: "53-20-161, AND 53-21-166,"

5. Page 1, line 23 through page 2, line 15.
Strike: section 1 of the bill in its entirety
Renumber: subsequent sections

6. Page 5, line 7 through page 6, line 15.
Strike: section 6 of the bill in its entirety
Renumber: subsequent sections

7. Page 9, line 14 through page 15, line 8.
Strike: sections 9 through 12 of the bill in their entirety
Renumber: subsequent sections

8. Page 15, lines 22 through 24.
Strike: section 16 of the bill in its entirety
Renumber: subsequent sections

with **Ms. Gilkey** in response to the language. **REPRESENTATIVE KASTEN** said it was a good bill, and it was a necessary bill. If the bill would pass, she asked **SENATOR CHRISTIAENS** to carry the bill to the Senate floor.

HEARING ON HB 366

Opening Statement by Sponsor:

BETTY LOU KASTEN, House District 99, Brockway, sponsored HB 366. She said it was originally brought in an effort to bring the advocacy people and the department people together in some of the disputes they were having. Since that wasn't possible, the House had seen fit to strip all of the amendments that deal with the advocacy group out and merely left the coordinating statutes in HB 186 to be coordinated with the adult protection that the statute in HB 366 addresses.

Proponents' Testimony:

Ann Gilkey, Attorney, Department of Family Services, said HB 366 is also a general clean-up bill related to adult protective services. It would change the reference to developmentally disabled person to a person with developmental disabilities. She said the SRS were also trying to change it to the correct definition. It would consolidate redundant laws and repeal unnecessary laws, it would coordinate it with the same amendments they were trying to get in HB 186 and make it consistent with the child protective service statutes. It does the same regarding the release of information of a potentially harmful person working around the elderly or the developmentally disabled. It was at the request of the providers that the bill was proposed. She urged support of HB 366.

Opponents' Testimony:

None.

Informational Testimony:

Russell Hill, representing the Montana Trial Lawyers Association, called the committee's attention to Page 9, Section 6, having to do with the immunity from civil and criminal liabilities. This is essentially a mirror image of the Section they saw in HB 186. In the House, they did not stand in opposition because of the practical reality. The amendments made in the House had not been made here, he said. This would not require the independent substantiation or the other provisions.

Questions From Committee Members and Responses:

SENATOR HALLIGAN said he wanted to make sure the language was as tight as possible on the language on confidentiality that was

opened up to the person carrying out background screening, or employment, or volunteer-related screening. He thought there might be some mischief here in respect to verification to the questioner. In bitter divorce cases, for instance, the people might ask a friend to get information for a contrived background check on the spouse. He asked if there was a way their department could request the requesting party ask for the information in person. **Ms. Gilkey** said the concern is legitimate. They struggled to make it as tight as possible and still allow the necessary sharing of information. Custody disputes are a problem in that they have to investigate all referrals, but it did not mean they would substantiate it. Even if they had substantiated abuse, it might not mean they would pose a risk to children in an employment situation they were getting into. That would be the criteria. They would not pass the custody information along regardless of who calls. Internally they have a system whereby if they substantiate abuse or neglect by a person, that person is notified with a right to review the substantiation and get the record amended. They were trying to build all the safeguards into the system with the recognition that not everyone would go to court and be charged criminally. **SENATOR HALLIGAN** asked the sponsor if she thought adding something about someone showing up in person, saying they represented some agency would be appropriate? He thought it was a pretty wide gap in the confidentiality law. **REPRESENTATIVE KASTEN** replied that if an agency in Plentywood requested the information, it would be difficult to come to Helena. Perhaps it could say, "in writing."

Closing by Sponsor:

REPRESENTATIVE KASTEN closed without further comment.

HEARING ON HB 55

Opening Statement by Sponsor:

REPRESENTATIVE JOHN BOHLINGER, House District 14, the Northeast side of the old part of Billings, sponsored HB 55 at the request of the Department of Social and Rehabilitation Services and the Child Support Enforcement Division. HB 55 is an act to revise the child support income deduction laws for the State of Montana to bring them into compliance with the federal laws. Child support enforcement programs are authorized under Title 4D of the federal Social Security Act and are state-administered. State programs must conform with federal regulations. The purpose of this bill is to bring the state program into compliance with the federal program. Under present Montana law, income withholding orders may be issued by two entities: the courts, and by the Child Support Enforcement Division. Federal law governing the State Federal Child Enforcement Program sets out certain requirements for state income withholding laws. The state's failure to conform its statutes to these requirements may result in the failure of the state's 4D plan which in turn, could result

DATE 3-15-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 55, HB65, HB366, HB186, HB322

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Mary Ann Wellbank	SRS-CSED	HB55		
Robert T Anderson	OCHS	HB65	L	
Andrée Larose	Montana Advocacy Program	HB65	✓	
Kate Cholewa	MT Women's Coalition	HB55	X	
Greg Bergan	MKA	HB322	X	
Stuart Doggett	MKA	HB322	X	
Dick Von Haenke	SRS-DDD	HB366	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

SENATOR GROSFIELD stated he disagreed with **SENATOR DOHERTY** on all points. On dealing with a pattern of abuse, the key word on page 4, line 27, is "or". This leaves the court with discretion to deal with verbal abuse and any other abuse. Section 10 makes the physicians accountable but it is not insurmountable. According to the Supreme Court, the legislature cannot do anything which makes the access to this right unduly burdensome.

SENATOR HOLDEN commented that according to the testimony, these girls are just not prepared to make a decision about abortion and that is why parental notification is so important.

SENATOR NELSON believed the judicial bypass to be unduly burdensome. It is supposed to be broad and somewhat confidential; however no teen is going to be sophisticated enough to know how to go about getting a judicial bypass. She supports the part that parents ought to be notified but for those in dysfunctional families we need to come up with something which is workable for them.

Vote: The motion **CARRIED** on oral vote with **SENATORS BARTLETT, DOHERTY, HALLIGAN,** and **NELSON** voting **"NO".**

EXECUTIVE ACTION ON HB 366

Discussion: **SENATOR HALLIGAN** presented an amendment, **EXHIBIT 7.** He stated this would make sure that anyone requesting background information from the Department of Family Services make that request in writing.

Motion: **SENATOR HALLIGAN MOVED TO AMEND HB 366.** The motion **CARRIED** on oral vote.

Motion/Vote: **SENATOR HALLIGAN MOVED HB 366 BE CONCURRED IN AS AMENDED.** The motion **CARRIED** on oral vote.

EXECUTIVE ACTION ON HB 186

Discussion: **SENATOR HALLIGAN** presented an amendment, **EXHIBIT 8.** The first amendment was agreed to at the committee hearing.

Ann Gilkey, Department of Family Services, stated the concern by the House was that there would be simply an anonymous referral which wasn't substantiated. They believed that substantiated by the department and by independent corroboration would lead to a double standard.

Motion/Vote: **SENATOR HALLIGAN MOVED TO AMEND HB 186.** The motion **CARRIED** on oral vote.

Discussion: **SENATOR HALLIGAN** commented the other amendment which was discussed at the hearing would be on page 9, line 30, the word "advocate" was struck. That was only because the advocacy program people did not want to be included but they want to make

SENATE STANDING COMMITTEE REPORT

March 22, 1995

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration HB 366 (third reading copy -- blue), respectfully report that HB 366 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 7, line 21.
Following: "department"
Strike: ";"
Insert: ". A request for information under this subsection must be made in writing."

-END-

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

661315SC.SRF

Passed

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 3/22/95
BILL NO. HB 36

Amendments to House Bill No. 366
Third Reading Copy (blue)

Requested by Senator Halligan
For the Committee on Judiciary

Prepared by Valencia Lane
March 15, 1995

1. Page 7, line 21.
Following: "department"
Strike: ":"
Insert: ". A request for information under this subsection must be made in writing."